

REMARKS

Supplementing the Preliminary Amendment dated April 30, 2004, the Applicants submit the appended Declarations of all of the inventors, Messrs. Lloyd, McNally and Smeester, along with a Declaration of Damian J. Greco and various exhibits which are referenced in the declarations. Additionally, claim 76 has been amended in a manner to remove the basis for its rejection under 35 U.S.C. § 112.

In the parent case, all of the rejections were based solely on U.S. Patent No. 6,496,930 to Ono et al. The Ono patent has a filing date of December 18, 1998, and the rejections were based solely on 35 U.S.C. § 102(e). Under that statute, and because the Ono patent was filed before November 29, 2000, the Ono patent cannot rely upon its foreign filing date but instead must rely on its actual filing date in the United States as its effective date under 35 U.S.C. § 102(e). That actual filing date is December 18, 1998.

It is respectfully submitted that the enclosed Declarations clearly establish a conception of the invention prior to December 18, 1998 (see in particular Paragraphs 2-4 and Exhibits 1 and 1A-1H of the Declarations of Lloyd, McNally and Smeester and Paragraph 3 and Exhibit 1 of the Greco Declaration).

Clearly, there is well documented and corroborated proof of a conception date prior to August 12, 1997 which is prior to the filing date of the Ono patent.

There is also clear proof of an actual reduction to practice at least by July of 1998 (see in particular Paragraphs 5-8 and Exhibit 2 of the Declarations of Lloyd, McNally and Smeester and Paragraphs 4-10 and Exhibits 2-3 of the Greco Declaration). This constitutes well

documented and corroborated proof that the invention was actually reduced to practice and successfully operated to perform its intended function under actual field conditions in July of 1998, prior to the filing date of the Ono patent.

Thus, the invention was conceived and actually reduced to practice prior to the filing date of the Ono patent, and the Ono patent is thus antedated as a reference for this reason alone.

Additionally and alternatively, there is clear proof of diligence in effecting a constructive reduction to practice from a time just prior to the filing date of the Ono patent to date the present application was filed in March of 1999. In particular, as evidenced by Paragraphs 9-14 of the Lloyd, McNally and Smeester Declarations and Paragraphs 11-15 of the Greco Declaration, the inventors and the assignee were diligent in conducting continuous and ongoing research to determine the patentability, what features potentially could be patented, how to proceed with applying for a patent, how much the cost would likely be and how to locate a patent attorney able to provide the best assistance in patenting the invention. Thus, conception prior to the filing date of the Ono patent coupled with diligence in a constructive reduction to practice from a time just prior to the Ono filing date up to the filing date of this application is established by well corroborated evidence.

For the foregoing reasons, the Ono patent is antedated on two independent basis, namely, (1) an actual reduction to practice prior to the Ono filing date with no abandonment, suppression or concealment of the invention, and (2) conception prior to the Ono filing date

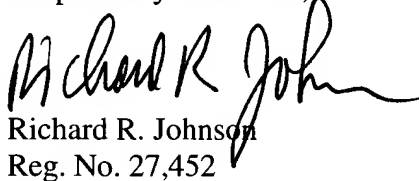
coupled with diligence from a time prior to the Ono filing date until the constructive reduction to practice that occurred when this application was filed in March of 1999.

All activity that took place prior to one year from the filing date was clearly experimental in nature as the Declarations and documentation demonstrate.

Inasmuch as the Ono patent is the only basis upon which the claims of this application have been rejected, it is respectfully submitted that all basis for rejection has been removed by the showing submitted herewith and that all of the claims are allowable over the prior art. A formal Notice of Allowance is thus believed to be in order and is respectfully requested in due course. If the Examiner believes that a telephone conference would in any way expedite the handling of any issues that remain to be resolved, he is invited to call the number listed below at his convenience.

The Commissioner is authorized to charge any additional fee which may be due, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,



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